

NOV 05 2009

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

FILED

IN THE MATTER OF THE
APPLICATION FOR AN INSURANCE
AGENCY LICENSE FOR NATIVE
AMERICANS INSURANCE GROUP,
INC.

)
)
)
)
)
)
)

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
RECOMMENDED ORDER
AND ORDER

CAUSE NO. A-1849

This matter came for hearing on the 29th day of October, 2009, before Joel F. Green, a hearing officer duly appointed by the Director of the Nebraska Department of Insurance. The Department of Insurance ("Department") was represented by its attorney, Martin W. Swanson. Native Americans Insurance Group, Inc. ("Applicant") was present and was represented by Gary Shovlain. The proceedings were tape recorded by Tracy Gruhn, a licensed Notary Public. Evidence was received, testimony was adduced and the matter was taken under advisement. As a result of the hearing, the hearing officer hereby makes the following Findings of Fact, Conclusions of Law, and Recommended Order.

FINDINGS OF FACT

1. The Department is the agency of the State of Nebraska charged with licensing insurance producers and insurance agencies.

2. On or about September 10, 2009, a Notice of Hearing in this matter was served upon the Applicant in care of Gary Shovlain, at 2621 W. Highway 20, P.O. Box 2085, Grand Island, NE 68802, via certified mail, return receipt requested, and by regular US mail. (See Ex.

1)

3. On or about September 18, 2009, the Domestic Return Receipt card attached to the certified letter was returned to the Department by the United States Postal Service indicating a delivery date of September 17, 2009. (See Ex. 1)

4. An application for an insurance agency license was received by the Department on or about August 14, 2009, signed by Gary Shovlain ("Shovlain") as President of the Applicant. In the application, Applicant indicated the business address of Applicant as 2621 W. Hwy 30, Grand Island, NE 68803. (See Ex. 2)

5. In the application, Applicant identified Deane Hadwiger ("Hadwiger") as the Designated/Responsible Licensed Producer responsible for the Applicant's compliance with the insurance laws, rules, and regulations of the State of Nebraska. (See Ex. 2)

6. Hadwiger is a licensed insurance producer in the State of Nebraska whose registered business address with the Department is South Loop Insurance, 31275 Hawk Road, Pleasanton, NE 68866. Hadwiger is currently authorized to transact business in the following lines of insurance: Crop; Life Insurance and Annuities; Property and Casualty; and Sickness, Accident, and Health. (See Ex. 2)

7. Upon reviewing the application, Jason McCartney ("McCartney"), licensing administrator for the Licensing Division of the Department and the individual responsible for reviewing the application of the application, became aware of administrative actions taken against former agents that listed their business address as 2621 W. Hwy 30, Grand Island, Nebraska, and of ongoing investigation by several state and federal agencies regarding activities at that business address. He also became aware that the agency license formerly issued at the address, namely First Americans Insurance Services ("FAIS"), had expired and that FAIS is in bankruptcy. (See Ex. 2)

8. Based upon his review of the application, McCartney contacted Hadwiger and requested a meeting at the offices of the Department on August 27, 2009, to address specific inquiries surrounding information provided by the Applicant. (See Ex. 2)

9. During his interview with the Department, Hadwiger indicated he did not intend to work from the registered business address of the Applicant, 2621 W. Hwy. 30, Grand Island, NE 68803, but rather would perform his functions as the Designated/Responsible Licensed Producer of the Applicant as well as maintain financial records for the Applicant from his current registered business address of 31275 Hawk Rd., Pleasanton, NE 68866. (See Ex. 2)

10. During his interview with the Department, Hadwiger further informed the Department he did not have any experience with Native American Tribes or tribal business, as his experience as an insurance producer was mainly in crop insurance. Hadwiger further informed the Department he had limited property and casualty insurance experience, other than crop insurance sales, and had no workers' compensation insurance experience. (See Ex. 2)

11. McCartney recommended the agency application be denied based on his review of the Applicant's application as licensing administrator, and based upon the information provided by Hadwiger, specifically that Hadwiger, as the designated producer, would not be working from the office of the Applicant and that Hadwiger had no experience in workers' compensation insurance. (See Ex. 2)

12. At the hearing, Shovlain testified that several employees associated with FAIS and First Americans Insurance Group ("FAIG") will be working at the same address as listed by the Applicant on its application, and that these individuals will be actively providing advice to Shovlain on insurance matters. He further testified that these individuals currently use and will continue to use the same phone system and computer system.

DISCUSSION

Nebraska Revised Statute § 44-4053(2)(b) provides that a business entity acting as an insurance producer is required to obtain an insurance producer license and that before approving the application, the director shall find that the business entity has designated a licensed producer responsible for the business entity's compliance with the insurance laws, rules, and regulations of this state. Failure on behalf of an applicant to meet this standard shall result in the denial of the business entity's application.

As indicated, the role of the designated producer is to be responsible for and ensure the Applicant's compliance with the insurance laws, rules, and regulations of the State of Nebraska. In reviewing the facts before me, the fact that Hadwiger, the designated producer of the Applicant, will not be working from or present at the office of the Applicant is troublesome as it raises questions about how a designated producer can ensure compliance by the Applicant, including the Applicant's employees, with the insurance laws of the State of Nebraska if the designated producer is not working at the same office as the Applicant's other employees. This issue becomes particularly significant when, based upon on testimony elicited from Shovlain and information contained in McCartney's affidavit, it appears that several administrative actions were taken against former insurance producers working out of the same address as that of the Applicant, that investigations by several state and federal agencies regarding activities at that business address are currently ongoing, and that several individuals who were or are currently associated with those entities under investigation, FAIS and/or FAIG, are to be actively utilized as consultants or employed by the Applicant.

Given the circumstances surrounding FAIS and FAIG and the involvement of individuals associated with these entities in the Applicant's insurance business, and given the Department's duty to protect the wellbeing and interests of the general public, the lack of a designated producer at the business address of the Applicant coupled by the fact that the expertise of the Applicant's designated

producer, Hadwiger, is largely limited to crop insurance, sufficiently demonstrates and supports the Department's reasoning for recommending the denial of the Applicant's insurance agency application.

CONCLUSIONS OF LAW

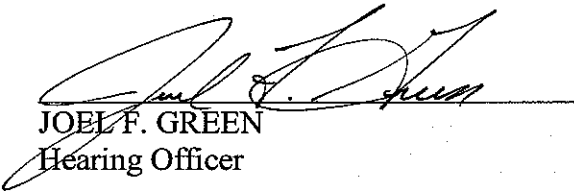
1. The Department has broad jurisdiction, control and discretion over the licensing of Applicant to sell insurance in the State of Nebraska pursuant to NEB. REV. STAT. §§ 44-101.01 and 44-4047 ET SEQ.
2. The Department has personal jurisdiction over Applicant.
3. Based upon the facts presented, Applicant's application for an insurance agency license in the State of Nebraska pursuant to NEB. REV. STAT. § 44-4053 should be denied.

RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended that Applicant's insurance agency application in the State of Nebraska be denied. The Nebraska Department of Insurance will continue to retain jurisdiction over this matter until all provisions of this order have been complied with.

Dated this 4th day of November, 2009.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE

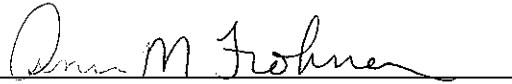

JOEL F. GREEN
Hearing Officer

CERTIFICATE OF ADOPTION

I have reviewed the foregoing Findings of Fact, Conclusions of Law, and Recommended Order and hereby certify that the Recommended Order is adopted as the official and final Order of the Department in the matter of the Application for an Insurance Agency License for Native Americans Insurance Group, Inc., Cause No. A-1849.

Dated this 5th day of November, 2009.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE


ANN M. FROHMAN
Director of Insurance

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Findings of Fact, Conclusions of Law, Recommended Order, and Order was served upon Applicant in care of Gary Shovlain, 2621 W. Highway 30, P.O. Box 2085, Grand Island, NE, 68802, via certified mail, return receipt requested, and by regular US mail on this 5th day of November, 2009.

